

**ENTERED**

June 28, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

PEDRO C. VILLALOBOS,

Plaintiff,

VS.

HUMBERTO TIJERINA, *et al*,

Defendants.

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CIVIL ACTION NO. 7:13-CV-00614

**ORDER ADOPTING REPORT AND RECOMMENDATION**

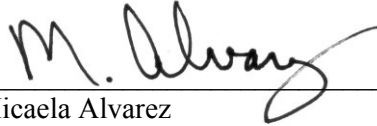
Pending before the Court is Plaintiff's 42 U.S.C. § 1983 lawsuit, which had been referred to the Magistrate Court for a report and recommendation. On May 10, 2015, the Magistrate Court issued the Report and Recommendation, recommending that Plaintiff's § 1983 claims against the named Defendants be dismissed. Plaintiff filed a response in opposition, albeit out-of-time, which the Court has nonetheless considered. However, Plaintiff's response does not raise any factual or legal objections; he simply disagrees with the recommendation and seeks an abatement of his case and appointment of counsel. Thus, the Court need not conduct a de novo review.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has reviewed the Report and Recommendation for clear error.<sup>1</sup> Finding no clear error, the Court adopts the Report and Recommendation in its entirety. Accordingly, it is hereby **ORDERED** that Plaintiff's § 1983 claims against the named Defendants are **DISMISSED** with prejudice as frivolous and for failure to state a claim, or until the *Heck* conditions are met. It is further **ORDERED** that any state law claims against Defendants be **DISMISSED** without prejudice for jurisdictional reasons. Finally, Plaintiff's request for appointment of counsel is **DENIED**.

<sup>1</sup>As noted by the Fifth Circuit, "[t]he advisory committee's note to Rule 72(b) states that, '[w]hen no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Douglas v. United Services Auto. Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996)(quoting Fed. R. Civ. P. 72(b) advisory committee's note (1983)) *superceded by statute on other grounds* by 28 U.S.C. § 636(b)(1), *as stated in* *ACS Recovery Servs., Inc v. Griffin*, No. 11-40446, 2012 WL 1071216, at \*7 n.5 (5th Cir. April 2, 2012).

**IT IS SO ORDERED.**

**DONE at McAllen, Texas, this 28th day of June, 2016.**

A handwritten signature in black ink, appearing to read "M. Alvarez", is written over a horizontal line.

Micaela Alvarez  
United States District Judge